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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

MIGUEL ANGEL HUERTA,

Defendant and Appellant.

B291019

(Los Angeles County  
Super. Ct. No. BA168888)

APPEAL from an order of the Superior Court of  
Los Angeles County, William C. Ryan, Judge. Affirmed.

Suzan E. Hier, under appointment by the Court of Appeal,  
for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief  
Assistant Attorney General, Lance E. Winters, Senior Assistant  
Attorney General, Steven D. Matthews, Supervising Deputy  
Attorney General, Noah P. Hill and Analee J. Brodie, Deputy  
Attorneys General, for Plaintiff and Respondent.

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In 1998 Miguel Angel Huerta was convicted of carrying a concealed dirk or dagger and sentenced under the three strikes law (Pen. Code, §§ 667, subds. (b)-(j); 1170.12)<sup>1</sup> to an indeterminate state prison term of 25 years to life. At an eligibility hearing under the Three Strikes Reform Act of 2012, enacted by the voters as Proposition 36, the superior court found Huerta was not eligible to have his sentence reduced and denied the petition for recall of his prison sentence. On appeal Huerta contends the court erred in concluding he was armed during the commission of the offense that resulted in his indeterminate life sentence. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. Huerta's Third Strike Conviction*

On May 22, 1998 Deputy Sheriff Leo Noyola and his partner were on patrol in the City Terrace neighborhood of Los Angeles when they observed Huerta and another man walking into a carport. Huerta looked directly at Noyola and put his hand underneath his shirt. Fearing Huerta was reaching for a weapon, Noyola ordered Huerta and his companion to stop. Huerta removed his hand, but was now holding a knife with the blade extended toward Noyola. Huerta was not holding the knife in a threatening manner. Noyola told Huerta to drop the knife, which he did. The knife was approximately nine inches long, with a five-inch blade.

During a custodial interrogation four days after the incident, Huerta admitted he had the knife in his possession when Noyola stopped him. Huerta explained he carried the knife

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<sup>1</sup> Statutory references are to this code.

for protection. However, during trial Huerta's defense was that Huerta's companion had asked him to hold the knife while he tied his shoe.

Huerta was convicted by a jury of carrying a concealed dirk or dagger (former § 12020, subd. (a), now § 21310). The jury also found true special allegations Huerta had suffered six prior serious or violent felony convictions within the meaning of the three strikes law.

At sentencing the trial court considered the probation report and Huerta's history of seven burglary and robbery convictions, as well as a conviction for assault with a deadly weapon, and his prior failures to successfully complete parole. Defense counsel argued in mitigation Huerta's crimes had not resulted in injury to any person and were the result of an underlying substance abuse problem. The court declined to dismiss the prior third strike offenses and imposed an indeterminate sentence of 25 years to life. We affirmed the judgment. (See *People v. Huerta* (Nov. 23, 1999, B130694) [nonpub. opn.] )

## *2. The Instant Petition*

On December 12, 2012 Huerta petitioned for recall of his sentence and resentencing under Proposition 36, which amended the three strikes law to provide, in general, that a recidivist is not subject to an indeterminate life term for a third strike felony that is neither serious nor violent unless the offense satisfies other criteria identified in the statute. The amendments also allow eligible inmates previously sentenced to indeterminate terms under the three strikes law to petition for recall of their sentences and resentencing to the term that would have been imposed for their crime had they been sentenced under the new sentencing

provisions. (§ 1170.126, subd. (a); see *People v. Perez* (2018) 4 Cal.5th 1055, 1062; *People v. Superior Court (Kaulick)* (2013) 215 Cal.App.4th 1279, 1293.)

In opposing the petition the People argued Huerta was ineligible for Proposition 36 relief because he had been armed with a deadly weapon during the commission of the commitment offense. The superior court agreed and denied the petition with prejudice.

## DISCUSSION

### 1. *Governing Law*

Proposition 36 was intended to “[r]estore the Three Strikes law to the public’s original understanding by requiring life sentences only when a defendant’s current conviction is for a violent or serious crime” and to permit “repeat offenders convicted of non-violent, non-serious crimes like shoplifting and simple drug possession [to] receive twice the normal sentence instead of a life sentence.” (Voter Information Guide, Gen. Elec. (Nov. 6, 2012) text of Prop. 36, § 1.) As part of its goal of limiting indeterminate life sentences to serious or violent felony offenders, Proposition 36 added section 1170.126, which permits inmates previously sentenced to life terms under an earlier version of the three strikes law to petition to recall their sentences and, if eligible for relief, to be resentenced to the term that would have been imposed for their crime under the new sentencing provisions. (§ 1170.126, subd. (a).)

Eligibility for resentencing depends on several factors. An inmate will be denied resentencing if (1) the current offense was serious or violent; (2) the prosecution establishes one of the four disqualifying exceptions to resentencing under

Proposition 36; or (3) the superior court determines, in its discretion, that resentencing the inmate would pose an unreasonable risk of danger to public safety. (§ 1170.126, subds. (e) & (f).) One of the disqualifying exceptions is if, “[d]uring the commission of the current offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.” (§§ 1170.126, subd. (e)(2), 667, subd. (e)(2)(C)(iii), 1170.12, subd. (c)(2)(C)(iii).)

Application of Proposition 36 to the undisputed facts presented here is a pure question of law, which we review de novo. (*People v. Prunty* (2015) 62 Cal.4th 59, 71; *People v. Rizo* (2000) 22 Cal.4th 681, 685-686.)

## *2. Huerta Was Armed with a Deadly Weapon Within the Meaning of Proposition 36*

Former section 12020, subdivision (a), provided any person “who carries concealed upon his or her person any dirk or dagger is punishable by imprisonment in a county jail not exceeding one year or in the state prison.” (See *People v. Rubalcava* (2000) 23 Cal.4th 322, 327.) A dirk or dagger is a “deadly weapon[ ] as a matter of law.”<sup>2</sup> (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1029 (*Aguilar*).) It follows that Huerta’s conviction for carrying a

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<sup>2</sup> “[A] ‘dirk’ or ‘dagger’ means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by Section 653k, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.” (Former § 12020, subd. (c)(24).)

concealed dagger necessarily means he was armed with a deadly weapon during the commission of the offense, rendering him ineligible for Proposition 36 resentencing. (§§ 1170.126, subd. (e)(2), 667, subd. (e)(2)(C)(iii), 1170.12, subd. (c)(2)(C)(iii).)

Huerta challenges this interpretation of the applicable statutes, arguing to be “armed” with a deadly weapon means not only that the weapon was available to the defendant, but also that it was used to facilitate the underlying offense. Because the offense of carrying a concealed dagger was completed simply by possessing the weapon, Huerta argues the dagger was not used to facilitate the offense. In other words, he contends the exception to resentencing eligibility for offenses in which the defendant was armed with a deadly weapon during the commission of the current offense cannot apply to offenses in which being armed with a deadly weapon is an element of the offense. Huerta also argues the statute should not be read to categorically exclude resentencing for any violation of former section 12020 because the voters did not enumerate a blanket exception for such a conviction.

As Huerta acknowledges, these arguments have been unanimously rejected. ““Armed with a firearm” [or weapon] has been statutorily defined and judicially construed to mean having a firearm [or weapon] available for use, either offensively or defensively.” (*People v. Cruz* (2017) 15 Cal.App.5th 1105, 1109-1110; accord, *People v. Osuna* (2014) 225 Cal.App.4th 1020, 1029.) “[I]t is the availability—the ready access— of the weapon that constitutes arming.” (*People v. Bland* (1995) 10 Cal.4th 991, 997; accord, *Cruz*, at p. 1111; *Osuna*, at p. 1029.) As *Cruz* explained, “Proposition 36 turns on whether the defendant was armed ‘[d]uring the commission of the current offense’ (§ 1170.12, subd. (c)(2)(C)(iii) . . . .) “During” is variously defined as

“throughout the continuance or course of” or “at some point in the course of.” [Citation.] In other words, it requires a temporal nexus between the arming and the underlying felony, not a facilitative one.” (*Cruz*, at pp. 1111-1112; accord, *Osuna*, at p. 1032.)

Based on this principle, numerous courts have held that Proposition 36 disqualifies an inmate from being resentenced as a second strike offender if he or she was convicted of being a felon in possession of a firearm when the evidence showed the firearm was available for use either offensively or defensively. (*People v. Cruz*, *supra*, 15 Cal.App.5th at p. 1112; *People v. Osuna*, *supra*, 225 Cal.App.4th at p. 1034; *People v. Hicks* (2014) 231 Cal.App.4th 275, 279-280; *People v. Brimmer* (2014) 230 Cal.App.4th 782, 794-795; *People v. Blakely* (2014) 225 Cal.App.4th 1042, 1048-1053; *People v. White* (2014) 223 Cal.App.4th 512, 524.) We agree with the well-reasoned analysis in these cases.

Because the offense for which Huerta was convicted required proof he had a knife concealed upon his person, that knife was necessarily available to him for offensive or defensive use. Accordingly, Huerta was armed during the commission of the offense for purposes of eligibility for resentencing under section 1170.126. (See, e.g., *People v. Cruz*, *supra*, 15 Cal.App.5th at p. 1112; *People v. Hicks*, *supra*, 231 Cal.App.4th at p. 284; *People v. Elder* (2014) 227 Cal.App.4th 1308, 1312.) The superior court did not err in finding Huerta was ineligible for resentencing under Proposition 36.

**DISPOSITION**

The order is affirmed.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.